

¹ The record reflects that appellant accepted a limited-duty position on December 5, 2001.

tear of the left knee and a left knee repair. Appellant received appropriate benefits and the Office continued to develop her claim.

In a January 8, 2002 attending physician's report, Dr. Bruce Reider, a Board-certified orthopedic surgeon, performed arthroscopic surgery to remove a loose body in the left knee. In a January 18, 2002 report, Dr. Reider indicated that appellant was totally disabled and opined that it was too early to tell the outcome of the surgery. Appellant continued to treat with Dr. Reider. In a March 29, 2002 report, Dr. Reider diagnosed osteoarthritis and opined that appellant was post loose body removal of the left knee. He noted that appellant had returned for follow up and was better since the retained fragment of a suture was removed. He advised that the hypersensitivity had resolved and the incision had healed, although appellant continued to notice pain with squatting. Dr. Reider indicated that, on examination, there was a mild effusion in the knee, extension was full and flexion was about 120 degrees and the hypersensitivity was gone. He advised that, although appellant was doing better, she needed strengthening before returning to work. In an April 16, 2002 work capacity evaluation, Dr. Reider indicated that appellant could return to work with restrictions of no walking around at work, no standing for two and one half hours at a time and advised that appellant could drive to work but could not operate a motor vehicle.

On May 15, 2003 appellant filed a claim for a schedule award. By letter dated June 5, 2003, the Office requested an impairment rating from Dr. Reider. In particular the Office requested additional information and advised Dr. Reider that the lower extremity impairment evaluation worksheet should be used.

In a May 16, 2003 return to work certificate, Dr. Reider opined that appellant could return to work with no restrictions.² In a June 27, 2003 report, Dr. Reider utilized the worksheet provided by the Office and indicated that appellant had pain and difficulty with walking and climbing stairs along with constant swelling. He opined that the range of motion for flexion of affected versus opposite was 125 and 100 degrees with normal extension and no ankylosis. Dr. Reider advised that appellant had a lateral thrust at five degrees varus and she had evidence of post-traumatic irregularity or arthritis in the form of a medial compartment. He also advised that appellant had reached maximum medical improvement on May 16, 2003 and had to rely on a brace during working hours.

On August 4, 2003 the Office medical adviser reviewed Dr. Reider's June 27, 2003 report and utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5th ed. 2001) (hereinafter A.M.A., *Guides*) and the medical record. He noted appellant's history of injury and treatment which included an arthroscopic chondroplasty and debridement. The Office medical adviser stated that appellant had pain with stairs and that appellant would be entitled to 1 percent for a 4/5 for pain in the distribution of the femoral nerve, pursuant to the A.M.A., *Guides* 552, Table 17-37 and 482, Table 16-10. He indicated that appellant required an unloader brace for ambulation, had mild effusion and no ligamentous

² In an undated attending physicians report, Dr. Reider indicated that appellant was advised that she could return to work on May 19, 2003 without restrictions.

instability. He noted that appellant walked with a varus thrust and bow leggedness in the left lower extremity. The Office medical adviser advised that the thigh and calf girth were greater on the left than the right, which signified no atrophy. Regarding flexion and extension, the Office medical adviser noted that pursuant to the A.M.A., *Guides* 537, Table 17-10, appellant was entitled to zero percent. Regarding the diminished cartilage in the medial compartment, the Office medical adviser indicated that appellant was entitled to an additional seven percent pursuant to A.M.A., *Guides* 544, Table 17-31. The Office medical adviser subsequently utilized the Combined Values Chart of the A.M.A., *Guides*, 604, and opined that appellant would be entitled to an eight percent permanent impairment of the left lower extremity and reached maximum medical improvement on May 16, 2003.

By decision dated September 16, 2003, the Office granted appellant a schedule award for a total of 23.06 weeks of compensation for an 8 percent permanent impairment of the left lower extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of specified members or functions of the body. However, the Act does not specify the manner in which the percentage loss shall be determined. For consistent results and to ensure equal justice under the law to all appellants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all appellants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁵

ANALYSIS

In the instant case, the Office based its eight percent award on the opinions of Dr. Reider appellant's physician, and the Office medical adviser. Dr. Reider provided measurements and completed the worksheets provided by the Office. However, he did not calculate the percentage of impairment that appellant would be entitled to for her accepted injury. Thus, the Office properly referred the matter to an Office medical adviser.⁶ In his August 4, 2003 report, the Office medical adviser stated that he reviewed Dr. Reider's June 27, 2003 report and applied the

³ 5 U.S.C. §§ 8101-8193, 8107.

⁴ 20 C.F.R. § 10.404.

⁵ FECA Bulletin No. 01-05 (issued January 29, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002); *Paul R. Evans, Jr.*, 44 ECAB 646 (1993); *see James E. Jenkins*, 39 ECAB 860 (1988).

fifth edition of the A.M.A., *Guides*.⁷ In accordance with the A.M.A., *Guides*, he advised that he had referenced pages 552, 482 and 537, 544 and 604 of the A.M.A., *Guides* and explained that appellant's pain in the left lower extremity entitled her to a one percent impairment and the diminished cartilage entitled appellant to a seven percent impairment, which when utilized in the Combined Values Chart, entitled appellant to an eight percent permanent impairment of her left lower extremity. However, the Board notes pursuant to the A.M.A., *Guides*, impairment estimates in a person with arthritis are based on standard x-rays.⁸ In this case, the Office medical adviser has not indicated that this calculation was based on a review of standard x-rays. Accordingly, there is no medical evidence, conforming with the A.M.A., *Guides* to establish that appellant is entitled to more than an eight percent permanent impairment of the right lower extremity for which she has already received a schedule award. Therefore, appellant has failed to establish her entitlement to an increased schedule award.

CONCLUSION

The Board finds that appellant has not established that she sustained more than an eight percent permanent impairment of the left lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 16, 2003 is affirmed.

Issued: June 7, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁷ The fifth edition of the A.M.A., *Guides* became effective February 1, 2001. FECA Bulletin No. 01-05 (issued January 29, 2001) provides that any initial schedule award decision issued on or after February 1, 2001 will be based on the fifth edition of the A.M.A., *Guides*, even if the amount of the award was calculated prior to that date.

⁸ A.M.A., *Guides* 544, Table 17-31.